

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ELWOOD H. JONES

Petitioner,

Case No. 01-CV-564

v.

JUDGE ROSE

MARGARET A. BAGLEY, Warden

MAGISTRATE JUDGE MERZ

Respondent.

**RESPONDENT'S OPPOSITION TO ELWOOD H. JONES'S MOTION TO AMEND
PETITION (DKT. 15) ON GROUNDS OF EXHAUSTION**

Respondent opposes Jones's motion to amend his petition. In his motion (R. 142), Jones seeks to add a claim which he has not exhausted in the State courts. This Court may not grant a petition based on an unexhausted claim. 28 U.S.C. § 2254(b)(1)(A). Further, State corrective process is available to Jones to exhaust his claim in the State courts, i.e., in the form of a successive post-conviction petition or a motion for a new trial. 28 U.S.C. § 2254(b)(1)(B). Even though this Court may not *grant* a petition based on an unexhausted claim, it is welcome to *deny* a petition based on an unexhausted claim which lacks merit. 28 U.S.C. § 2254(b)(2). While Respondent does not waive the exhaustion requirement, she submits that this Court may deny Jones's petition notwithstanding the unexhausted claim which Jones seeks to add to his petition. *See* Motion (R. 142).

For the above reasons, Respondent respectfully requests that this Court deny Jones's motion to amend his petition.

Respectfully submitted,

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s/Sarah A. Hadacek

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Respondent's Opposition to Elwood H. Jones's Motion to Amend Petition (Dkt. 15) on Grounds of Exhaustion* was delivered via the court's electronic filing system this 14th day of November 2007 to counsel for petitioner.

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